BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	
GTE CORPORATION,	
Transferor,	
and	CC Docket No. 98-184
BELL ATLANTIC CORPORATION,	
Transferee	

REPLY TO SPRINT'S OPPOSITION TO JOINT OBJECTION OF BELL ATLANTIC CORPORATION AND GTE CORPORATION TO DISCLOSURE OF STAMPED CONFIDENTIAL DOCUMENTS

Sprint's opposition to Bell Atlantic's and GTE's objection to access for Mr. Kestenbaum and Mr. Dingwall to highly confidential documents rests on two arguments: one procedural and the other substantive. Neither argument carries the day. The objections of Bell Atlantic and GTE should be granted.

1. The Commission Should Consider The Merits Of The Objections. Sprint argues procedurally that Bell Atlantic's and GTE's objection is late and therefore should not be considered. This argument ignores the plain language of the Protective Order, which establishes a 3-day deadline for objections only in "cases where access to Stamped Confidential Documents is permitted pursuant to paragraph 3." Protective Order ¶ 5. Bell Atlantic and GTE contend that this is ***not*** a "case where access to Stamped Confidential Documents is permitted pursuant to paragraph 3" to begin with. Sprint should not be permitted to extend the scope of the protective order merely by requesting access to documents for individuals who are not entitled to view the

documents in the first place. The Commission should reject Sprint's procedural attack and should consider the merits of the joint objection.

2. The Commission Should Deny Mr. Kestenbaum And Mr. Dingwall Access To Bell Atlantic's And GTE's Sensitive Documents. On the merits, the Commission should sustain the joint objection.

First, as is clear from their titles, Messrs. Kestenbaum (Vice President, Federal Regulatory Affairs) and Dingwall (Director, State Regulatory/East) do not function as in-house counsel. Sprint's cursory statements to the contrary, without any evidentiary support, are insufficient to meet the requirements of the protective order. *See In the Matter of Application of WorldCom and MCI for Transfer of Control,* Order Ruling on Joint Objections, 13 FCC Rcd 13478 at ¶ 2 (1998).

Second, even assuming that Messrs. Kestenbaum and Dingwall should be considered in-house counsel, they plainly are involved in "competitive decision-making" under this protective order and under prior orders of the Commission. In fact, Sprint appears to concede that it "uses Mr. Kestenbaum's [and] Mr. Dingwall's advice to inform business strategies [and] decisions." Sprint Response at 4. Sprint makes no attempt to distinguish or even address the Commission's previous ruling that high-level employees such as Messrs. Kestenbaum and Dingwall presumptively engage in competitive decision-making. 13 FCC Rcd 13478 at ¶ 2. Sprint further ignores the Commission's admonition that "the mere assertion that they do not participate [in competitive decision-making], without any type of substantiation, is insufficient." *Id.*[1]

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[1] In fact, Sprint makes an even lesser showing than that which was rejected by the Commission in MCI-WorldCom. There, at least, Bell Atlantic had submitted an affidavit establishing that the questioned individuals function as "lawyers in and for the company rather than as 'business officers.'" *Id.* Here, Sprint has not even provided an affidavit, but instead offers a description of Messrs. (continued...)

At bottom, Sprint argues (with hyperbole) that even though Messrs. Kestenbaum and Dingwall may be involved in competitive decision-making, to bar their access to the documents would mean that "all in-house attorneys that advise corporate management on regulatory matters -- precisely those attorneys that would be involved in this merger proceeding -- would be prohibited from reviewing confidential materials whether or not those attorneys actually participate in such business decisions." Sprint Response at 4-5. Even if that were true, it would not be a ground for ignoring the very terms of the protective order. The entire purpose of the competitive decision-making proviso is to eliminate certain in-house lawyers from access to their competitors' confidential documents. Sprint cannot now complain when the order has its intended effect.

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[1] (...continued)
Kestenbaum's and Dingwall's duties that is highly generalized and that plainly includes competitive decision-making duties. Sprint Response at 4 ("Mr. Dingwall is responsible for formulating regulatory positions, conveying and advocating them on behalf of Sprint to state regulatory agencies, and reporting the results of such representation.")

CONCLUSION

The objection to Mr. Kestenbaum and Mr. Dingwall should be sustained.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing REPLY TO SPRINT'S OPPOSITION TO JOINT OBJECTION OF BELL ATLANTIC CORPORATION AND GTE CORPORATION TO DISCLOSURE OF STAMPED CONFIDENTIAL DOCUMENTS on the following by hand delivery on February 2, 1999.

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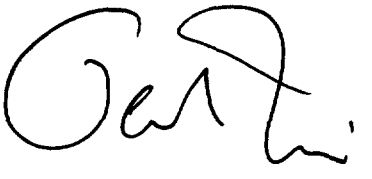

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